

2006 WL 6464146 (Me.Super.) (Trial Motion, Memorandum and Affidavit)  
Superior Court of Maine.  
Lincoln County

Eileen DOYLE, Plaintiff,  
v.  
Edwin DUQUETTE and Anna Duquette, Defendants.

No. RE0644.  
December 22, 2006.

**Motion for Ex Parte Approval of Attachment and Incorporated Memorandum of Law**

Denis Culley, Esq. (Bar # 9609), Attorney for the Plaintiff, Legal Services for the **Elderly**, Inc., 9 Green Street, P.O. Box 2723, Augusta, ME 04338-2723, Tel: (207) 621-0087.

**(Title to Real Estate Involved)**

NOW COMES Plaintiff, Eileen Doyle, by and through her attorney, Denis Culley, Esq. of Legal Services for the **Elderly**, Inc. and moves the Court to order Ex Parte attachment of Defendants Edwin and Anna Duquette's property pursuant to M.R. Civ. P. 4A.

The attachment should issue specifically against Defendants Edwin and Anna Duquette's interest in real property located in Waldoboro Maine, and more fully described in a Deed dated August 10, 2006, attached hereto as "Exhibit A" recorded in the Lincoln County Registry of Deeds at Book 3723, Page 278 and another dated August 23, 2006 attached hereto as "Exhibit B" and recorded in the Lincoln County Registry of Deeds in Book 3727, Page 308.

This motion is based upon the ground that: (1) it is more likely than not that Plaintiff will recover a judgment, including interest and costs, (2) there is a genuine risk of **elderly** plaintiff irretrievably losing her property; and (3) there is a genuine risk that Defendants will transfer or encumber parcels of said property to a bona fide purchaser, thereby undermining the intent of this suit and precluding remedies otherwise available to Plaintiff.

This motion is based upon Plaintiff's Complaint, the Certificate by Plaintiff's attorney, the Affidavit of Eileen Doyle; attached hereto as Exhibit C, and the memorandum of law, annexed hereto.

**MEMORANDUM OF LAW**

The Memorandum is offered by Plaintiff in support of her Motion for Ex Parte Approval of Attachment filed in this matter.

Plaintiff is entitled to attachment of "real estate, goods and chattels and other property...for damages and costs which the Plaintiff may recover." M. R. Civ. P. 4A(a). The Court may issue an order for attachment Ex Parte if it finds that it is "more likely than not that the plaintiff will recover judgment in an amount equal to or greater than the aggregate sum of the attachment and any insurance, bond, or other security, and property or credits attached by other writ of attachment or by trustee process known or reasonably believed to be available to satisfy the judgment, and that either (i) there is a clear danger that the defendant if notified in advance of attachment of the property will remove it from the state or will conceal it or will otherwise make it unavailable to satisfy a judgment, or (ii) there is immediate danger that the defendant will damage or destroy the property to be attached." M. R. Civ. P. 4A(g).

In order to satisfy the “more likely than not” standard, the Court must find by a preponderance of the evidence that the moving party will succeed on its claim and recover an amount at least equal to the sum attached. *Wilson v. DelPapa*, 634 A.2d 1252, 1255 (Me. 1993); *Trans Costal Corp. v. Curtis*, 622 A.2d 1186, 1188 (Me. 1993); *Boisvert v. Boisvert*, 672 A.2d 96 (Me. 1996); *Richardson v. McConologue*, 672 A.2d 599 (Me. 1996); See also Advisory Committee Notes to Feb. 15, 1992 amendment of M.R. Civ. P. 4A (“Under the amended standard...[a] moving party must show a greater than 50% chance of prevailing.”), and Advisory Committee Notes to Feb. 15, Amendment of M. R. Civ. P. 4B (“Rule 4B is amended to conform to the simultaneous amendments of Rule 4A governing attachments.”).

To show that the moving party will meet the “reasonable likelihood of success” standard, motions for attachment must be supported by Affidavit that “shall set forth specific facts sufficient to warrant the required findings.” *Wilson*, 634 A.2d at 1254 (quoting M. R. Civ. P. 4A(i)).

The trial Court is given great deference in making decisions regarding whether or not to grant an attachment. The standard of review for “an order for attachment or trustee process is an **abuse** of discretion or clear error.” *Boisvert*, 672 A.2d at 97-98.

This is a straightforward case of **elder abuse** and financial exploitation. A review of the allegations contained in Plaintiff's Complaint and the Affidavit of Eileen Doyle reveal more than enough evidence to support that it is “more likely than not” that Plaintiff will recover her interest in real estate properties.

Plaintiff, Eileen Doyle, is an eighty two (82) year old widow who resides at 625 Orff's Corner Road, Waldoboro, County of Lincoln, State of Maine. The total value of Eileen Doyle's estate is less than \$350,000. Defendant's Ann and Edwin Duquette are neighbors who have effected transfer of two valuable pieces of Plaintiff's land to themselves. At all times relevant to this matter, a close, trusting, and confidential family relationship existed between Plaintiff and Defendants. During a period of several months after Plaintiff experienced physical, medical and personal difficulties, Defendants developed and deepened a confidential relationship with Plaintiff by visiting her frequently, assisting her with household maintenance and cleaning, and feeding her meals. They also entered into an agreement to being home construction, repair and maintenance services for her in exchange for 1.8 acres of land.

On or about August 11, 2006 Defendants presented Plaintiff with a deed, dated August 10, 2006 describing approximately 3.67 acres of land. See, “Exhibit A”. Relying on her trusting and confidential relationship with her neighbors, caretakers and friends, Plaintiff signed that deed. At some later date Plaintiff realized that she had actually transferred 3.67 acres instead of 1.8 acres.

Defendants Anna and Edwin Duquette, once confronted with the discrepancy in the deed descriptions and acreage transferred, drew up a second deed, dated August 23, 2006, see “Exhibit B”, describing approximately 1.8 acres of land and induced Plaintiff to sign that deed, portraying it as a corrective deed to replace the deed of August 10, 2006.

Both deeds were subsequently recorded and both properties have been offered for sale

Plaintiff was not represented by counsel in the matter of the transfer of her real property to Defendants.

Defendants' actions constitute an improvident transfer of title within the meaning of 33 M.R.S.A. § 1021 et seq.

Even if Defendants assert that they acted with the informed consent of Plaintiff in registering both deeds, which she would adamantly deny, their actions nevertheless fall squarely within the parameters of Maine's Improvident Transfers of Title Act, 33 M.R.S.A. § 1021 et seq. (hereinafter, “the Act”). The Act creates a presumption of undue influence in any major transfer of real estate, for less than full consideration, by an **elderly** person to an individual with whom the **elderly** person has a confidential or fiduciary relationship. 33 M.R.S.A. § 1022(1). Furthermore, the Act defines a “confidential or fiduciary relationship” to include: a relationship between the **elderly** dependent person and her caregiver, 33 M.R.S.A. § 1022(2). The relationship of

Defendants Edwin and Anna Duquette with Plaintiff Eileen Doyle falls, at a minimum, within this category of relationships and, therefore, qualifies as a “confidential or fiduciary relationship” under the Act.

Defendants will be unable to rebut the presumption of undue influence because the entirety of the circumstances surrounding the transfer of Plaintiff's property all suggest that their actions were wrongful. Defendants, as described above, using undue influence caused Plaintiff to transfer property to them for far less than its assessed value. Plaintiff was in a confidential and dependent relationship with Defendants. Plaintiff did not have the benefit of counsel prior to or during the course of the transfer of her property to Defendants. Defendant, Anna Duquette, in fact, drafted both deeds. Accordingly, Defendants will be unable to overcome the presumption of undue influence, and the Court will be within its legal parameters to hold them liable for improvident transfer of title, undue influence, **abuse** of a confidential relationship, **abuse** of a fiduciary relationship and other counts contained in the Complaint in this matter.

Plaintiff is concerned that if Defendants are given notice of the request to attach their interest in the real property described in Exhibits A & B located in Waldoboro Maine, and more fully described in a Deed dated August 10, 2006, attached hereto as “Exhibit A” recorded in the Lincoln County Registry of Deeds at Book 3723, Page 278 and another dated August 23, 2006 attached hereto as “Exhibit B” and recorded in the Lincoln County Registry of Deeds in Book 3727, Page 308, they will either immediately encumber it, expedite its sale, cut off the timber or lease that land.

Accordingly, this Court should find that Plaintiff is entitled to an Order for Attachment.

Dated this 22 day of December 2006.

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